

1 JERRY S. BUSBY  
2 Nevada Bar #001107  
3 COOPER LEVENSOn, P.A.  
4 3016 West Charleston Blvd. - #195  
5 Las Vegas, Nevada 89102  
6 (702) 366-1125  
7 FAX: (702) 366-1857  
[jbusby@cooperlevenson.com](mailto:jbusby@cooperlevenson.com)

8 Attorneys for Defendant  
9 SMITH'S FOOD & DRUG CENTERS, INC.

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 JAMIE LEE ELLISON,

13 Case No.

14 Plaintiff,

vs.

15 SMITH'S FOOD AND DRUG CENTERS,  
16 INC., and DOES I-XX, inclusive,

17 **NOTICE OF REMOVAL**

18 Defendants.

19 Defendant, SMITH'S FOOD & DRUG CENTERS, INC. (hereinafter "SMITH'S") hereby  
20 gives notice of its removal of Case No. CV21-00024 from the Second Judicial District Court,  
21 Washoe County, Nevada, to this Court. This Notice of Removal is filed pursuant to 28 U.S.C.  
22 §§1441(a) and 1446. As grounds for removal, SMITH'S states as follows:

23 **I.**

24 **NOTICE OF REMOVAL IS TIMELY**

25 1. On January 6, 2021, Plaintiff JAMIE LEE ELLISON, filed this lawsuit against  
26 SMITH'S. Pursuant to 28 U.S.C. §1446(a), a complete copy of the state court file, including the  
Complaint and process, is attached hereto as Exhibit "A".

27 2. SMITH'S was served with process on or about March 8, 2021. SMITH'S hereby  
reserves any and all rights and defenses to Plaintiff's Complaint.

28 3. The Complaint filed and served on SMITH'S merely alleged that "As a direct and  
proximate result of Defendants' negligence, Plaintiff sustained physical injuries all to her general  
damage, in the past and the future, in an amount in excess of \$15,000." (Compl. ¶13).

1       4. Defense counsel learned that the value of this case was sufficient for Federal  
 2 jurisdiction on April 9, 2021. On that date, Plaintiff filed and served a Request to Exempt Case from  
 3 Arbitration in the pending State Court litigation. Therein, Plaintiff alleges that her medical bills total  
 4 \$170,634.84. (Pl.'s Petition at 2).

5       Upon receiving this information, Defense counsel learned that the "amount in controversy"  
 6 exceeds the jurisdictional minimum for diversity jurisdiction.

7       5. This Notice of Removal is timely filed under 28 U.S.C. §1446(b), which provides:

8       If the case stated by the initial pleading is not removable, a notice of  
 9 removal may be filed within thirty days after receipt by the defendant,  
 10 through service or otherwise, of a copy of an amended pleading,  
 11 motion, order or other paper from which it may first be ascertained  
 12 that the case is one which is or has become removable, except that a  
 13 case may not be removed on the basis of jurisdiction conferred by  
 14 section 1332 of this title more than 1 year after commencement of the  
 15 action.

16       6. The following pleadings have been entered and/or filed in State Court:

- 17       a. Plaintiff's Complaint filed January 6, 2021;
- 18       b. Summons and Declaration of Service filed March 15, 2021;
- 19       c. SMITH'S Answer to Plaintiff's Complaint filed March 29, 2021;
- 20       d. Plaintiff's Request to Exempt Case from Arbitration was served and filed  
                 April 9, 2021; and
- 21       e. Request for Submission filed April 21, 2021;
- 22       f. Order Exempting Case from Court Annexed Arbitration Program filed  
                 April 28, 2021; and
- 23       g. Pretrial Order filed May 4, 2021.

24       7. Other than the pleadings discussed above, no further proceedings have taken place in  
 District Court, Washoe County, Nevada as of the filing of this notice of removal.

## 25           II.

### 26           DIVERSITY JURISDICTION EXISTS

27       8. This is a civil action over which this Court has original jurisdiction pursuant to 28  
 28 U.S.C. §1332. This action may be removed pursuant to 28 U.S.C. §1441, because the amount in

1 controversy exceeds \$75,000, exclusive of interest and costs; the suit involves a controversy between  
2 citizens of different states; and none of the properly joined defendants is a citizen of Nevada.

3           **A.     The Amount in Controversy Requirement is Satisfied.**

4       9. Plaintiff's Complaint merely alleged that "As a direct and proximate result of  
5 Defendants' negligence, Plaintiff sustained physical injuries all to her general damage, in the past  
6 and the future, in an amount in excess of \$15,000." (Compl. ¶13).

7       10. Plaintiff's Request to Exempt Case from Arbitration, which was filed electronically  
8 on April 9, 2021, indicates that Plaintiff's medical bills total \$170,634.84. (Pl.'s Petition at 2). .

9           **B.     The Parties Are Diverse.**

10      11. The diversity of citizenship requirement is satisfied. SMITH'S is informed and  
11 believes that Plaintiff was at the time of her Complaint a citizen and resident of the State of Nevada.  
12 (See Compl. ¶1) .

13      12. SMITH'S was at the time of the filing of Plaintiff's Complaint and is now an Ohio  
14 Corporation with its principal place of business in the State of Utah.

15           **III.**

16           **REMOVAL TO THIS JURISDICTION IS PROPER**

17      14. Pursuant to 28 U.S.C. §§1332, 1441, and 1446, removal of the above-captioned state  
18 court action to this Court is appropriate.

19      15. Pursuant to 28 U.S.C. §1441(a), removal is made to this Court as the district and  
20 division embracing the place where the state action is pending 28 U.S.C. §108.

21      16. SMITH'S reserves the right to amend or supplement this Notice of Removal.

22      17. SMITH'S reserves all defenses, including, without limitation, the defense of lack of  
23 personal jurisdiction.

24      18. SMITH'S requests a trial by jury of all issues.

25      ///

26      ///

27      ///

28      ///

19. Defense counsel is providing Plaintiff, by and through her counsel, written notice of the filing of this Notice of Removal as required by 28 U.S.C. §1446(d). Further, Defense counsel is filing a copy of this Notice of Removal with the Clerk of the Second Judicial District Court, Washoe County, Nevada, where the action is currently pending.

Dated this 7th day of May, 2021,

## COOPER LEVENSON, P.A.

By /s/ Jerry S. Busby

Jerry S. Busby  
Nevada Bar No. 001107  
3016 West Charleston Blvd. - #195  
Las Vegas, Nevada 89102  
Attorneys for Defendant  
SMITH'S FOOD & DRUG CENTERS, INC.